

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Individuals with Dis-
3 abilities Education Improvement Act of 2004”.

4 **SEC. 2. ORGANIZATION OF THE ACT.**

5 This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH
DISABILITIES EDUCATION ACT

TITLE II—NATIONAL CENTER FOR SPECIAL EDUCATION
RESEARCH

TITLE III—MISCELLANEOUS PROVISIONS

6 **TITLE I—AMENDMENTS TO THE**
7 **INDIVIDUALS WITH DISABIL-**
8 **ITIES EDUCATION ACT**

9 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**
10 **ABILITIES EDUCATION ACT.**

11 Parts A through D of the Individuals with Disabil-
12 ities Education Act (20 U.S.C. 1400 et seq.) are amended
13 to read as follows:

14 **“PART A—GENERAL PROVISIONS**

15 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**
16 **PURPOSES.**

17 “(a) SHORT TITLE.—This title may be cited as the
18 ‘Individuals with Disabilities Education Act’.

19 “(b) TABLE OF CONTENTS.—The table of contents
20 for this title is as follows:

“PART A—GENERAL PROVISIONS

“Sec. 601. Short title; table of contents; findings; purposes.

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

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- “Sec. 604. Abrogation of State sovereign immunity.
- “Sec. 605. Acquisition of equipment; construction or alteration of facilities.
- “Sec. 606. Employment of individuals with disabilities.
- “Sec. 607. Requirements for prescribing regulations.
- “Sec. 608. State administration.
- “Sec. 609. Paperwork reduction.
- “Sec. 610. Freely associated states.

“PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH
DISABILITIES

- “Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
- “Sec. 612. State eligibility.
- “Sec. 613. Local educational agency eligibility.
- “Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
- “Sec. 615. Procedural safeguards.
- “Sec. 616. Monitoring, technical assistance, and enforcement.
- “Sec. 617. Administration.
- “Sec. 618. Program information.
- “Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

- “Sec. 631. Findings and policy.
- “Sec. 632. Definitions.
- “Sec. 633. General authority.
- “Sec. 634. Eligibility.
- “Sec. 635. Requirements for statewide system.
- “Sec. 636. Individualized family service plan.
- “Sec. 637. State application and assurances.
- “Sec. 638. Uses of funds.
- “Sec. 639. Procedural safeguards.
- “Sec. 640. Payor of last resort.
- “Sec. 641. State interagency coordinating council.
- “Sec. 642. Federal administration.
- “Sec. 643. Allocation of funds.
- “Sec. 644. Authorization of appropriations.

“PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN
WITH DISABILITIES

- “Sec. 650. Findings.

“SUBPART 1—STATE PERSONNEL DEVELOPMENT GRANTS

- “Sec. 651. Purpose; definition of personnel; program authority.
- “Sec. 652. Eligibility and collaborative process.
- “Sec. 653. Applications.
- “Sec. 654. Use of funds.
- “Sec. 655. Authorization of appropriations.

“SUBPART 2—PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, MODEL
DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION

- “Sec. 661. Purpose; definition of eligible entity.

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“Sec. 662. Personnel development to improve services and results for children with disabilities.

“Sec. 663. Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research.

“Sec. 664. Studies and evaluations.

“Sec. 665. Interim alternative educational settings, behavioral supports, and systemic school interventions.

“Sec. 667. Authorization of appropriations.

“SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH
DISABILITIES

“Sec. 670. Purposes.

“Sec. 671. Parent training and information centers.

“Sec. 672. Community parent resource centers.

“Sec. 673. Technical assistance for parent training and information centers.

“Sec. 674. Technology development, demonstration, and utilization; and media services.

“Sec. 675. Authorization of appropriations.

“SUBPART 4—GENERAL PROVISIONS

“Sec. 681. Comprehensive plan for subparts 2 and 3.

“Sec. 682. Administrative provisions.

1 “(c) FINDINGS.—Congress finds the following:

2 “(1) Disability is a natural part of the human
3 experience and in no way diminishes the right of in-
4 dividuals to participate in or contribute to society.
5 Improving educational results for children with dis-
6 abilities is an essential element of our national policy
7 of ensuring equality of opportunity, full participa-
8 tion, independent living, and economic self-suffi-
9 ciency for individuals with disabilities.

10 “(2) Before the date of enactment of the Edu-
11 cation for All Handicapped Children Act of 1975
12 (Public Law 94–142), the educational needs of mil-
13 lions of children with disabilities were not being fully
14 met because—

1 “(A) the children did not receive appro-
2 priate educational services;

3 “(B) the children were excluded entirely
4 from the public school system and from being
5 educated with their peers;

6 “(C) undiagnosed disabilities prevented the
7 children from having a successful educational
8 experience; or

9 “(D) a lack of adequate resources within
10 the public school system forced families to find
11 services outside the public school system.

12 “(3) Since the enactment and implementation
13 of the Education for All Handicapped Children Act
14 of 1975, this title has been successful in ensuring
15 children with disabilities and the families of such
16 children access to a free appropriate public edu-
17 cation and in improving educational results for chil-
18 dren with disabilities.

19 “(4) However, the implementation of this title
20 has been impeded by low expectations, and an insuf-
21 ficient focus on applying replicable research on prov-
22 en methods of teaching and learning for children
23 with disabilities.

1 “(5) Almost 30 years of research and experi-
2 ence has demonstrated that the education of children
3 with disabilities can be made more effective by—

4 “(A) having high expectations for such
5 children and ensuring their access to the gen-
6 eral education curriculum in the regular class-
7 room, to the maximum extent possible, in order
8 to—

9 “(i) meet developmental goals and, to
10 the maximum extent possible, the chal-
11 lenging expectations that have been estab-
12 lished for all children; and

13 “(ii) be prepared to lead productive
14 and independent adult lives, to the max-
15 imum extent possible;

16 “(B) strengthening the role and responsi-
17 bility of parents and ensuring that families of
18 such children have meaningful opportunities to
19 participate in the education of their children at
20 school and at home;

21 “(C) coordinating this title with other
22 local, educational service agency, State, and
23 Federal school improvement efforts, including
24 improvement efforts under the Elementary and
25 Secondary Education Act of 1965, in order to

1 ensure that such children benefit from such ef-
2 forts and that special education can become a
3 service for such children rather than a place
4 where such children are sent;

5 “(D) providing appropriate special edu-
6 cation and related services, and aids and sup-
7 ports in the regular classroom, to such children,
8 whenever appropriate;

9 “(E) supporting high-quality, intensive
10 preservice preparation and professional develop-
11 ment for all personnel who work with children
12 with disabilities in order to ensure that such
13 personnel have the skills and knowledge nec-
14 essary to improve the academic achievement
15 and functional performance of children with dis-
16 abilities, including the use of scientifically based
17 instructional practices, to the maximum extent
18 possible;

19 “(F) providing incentives for whole-school
20 approaches, scientifically based early reading
21 programs, positive behavioral interventions and
22 supports, and early intervening services to re-
23 duce the need to label children as disabled in
24 order to address the learning and behavioral
25 needs of such children;

1 “(G) focusing resources on teaching and
2 learning while reducing paperwork and require-
3 ments that do not assist in improving edu-
4 cational results; and

5 “(H) supporting the development and use
6 of technology, including assistive technology de-
7 vices and assistive technology services, to maxi-
8 mize accessibility for children with disabilities.

9 “(6) While States, local educational agencies,
10 and educational service agencies are primarily re-
11 sponsible for providing an education for all children
12 with disabilities, it is in the national interest that
13 the Federal Government have a supporting role in
14 assisting State and local efforts to educate children
15 with disabilities in order to improve results for such
16 children and to ensure equal protection of the law.

17 “(7) A more equitable allocation of resources is
18 essential for the Federal Government to meet its re-
19 sponsibility to provide an equal educational oppor-
20 tunity for all individuals.

21 “(8) Parents and schools should be given ex-
22 panded opportunities to resolve their disagreements
23 in positive and constructive ways.

24 “(9) Teachers, schools, local educational agen-
25 cies, and States should be relieved of irrelevant and

1 unnecessary paperwork burdens that do not lead to
2 improved educational outcomes.

3 “(10)(A) The Federal Government must be re-
4 sponsive to the growing needs of an increasingly di-
5 verse society.

6 “(B) America’s ethnic profile is rapidly chang-
7 ing. In 2000, 1 of every 3 persons in the United
8 States was a member of a minority group or was
9 limited English proficient.

10 “(C) Minority children comprise an increasing
11 percentage of public school students.

12 “(D) With such changing demographics, re-
13 cruitment efforts for special education personnel
14 should focus on increasing the participation of mi-
15 norities in the teaching profession in order to pro-
16 vide appropriate role models with sufficient knowl-
17 edge to address the special education needs of these
18 students.

19 “(11)(A) The limited English proficient popu-
20 lation is the fastest growing in our Nation, and the
21 growth is occurring in many parts of our Nation.

22 “(B) Studies have documented apparent dis-
23 crepancies in the levels of referral and placement of
24 limited English proficient children in special edu-
25 cation.

1 “(C) Such discrepancies pose a special chal-
2 lenge for special education in the referral of, assess-
3 ment of, and provision of services for, our Nation’s
4 students from non-English language backgrounds.

5 “(12)(A) Greater efforts are needed to prevent
6 the intensification of problems connected with
7 mislabeling and high dropout rates among minority
8 children with disabilities.

9 “(B) More minority children continue to be
10 served in special education than would be expected
11 from the percentage of minority students in the gen-
12 eral school population.

13 “(C) African-American children are identified
14 as having mental retardation and emotional disturb-
15 ance at rates greater than their White counterparts.

16 “(D) In the 1998–1999 school year, African-
17 American children represented just 14.8 percent of
18 the population aged 6 through 21, but comprised
19 20.2 percent of all children with disabilities.

20 “(E) Studies have found that schools with pre-
21 dominately White students and teachers have placed
22 disproportionately high numbers of their minority
23 students into special education.

24 “(13)(A) As the number of minority students in
25 special education increases, the number of minority

1 teachers and related services personnel produced in
2 colleges and universities continues to decrease.

3 “(B) The opportunity for full participation by
4 minority individuals, minority organizations, and
5 Historically Black Colleges and Universities in
6 awards for grants and contracts, boards of organiza-
7 tions receiving assistance under this title, peer re-
8 view panels, and training of professionals in the area
9 of special education is essential to obtain greater
10 success in the education of minority children with
11 disabilities.

12 “(14) As the graduation rates for children with
13 disabilities continue to climb, providing effective
14 transition services to promote successful post-school
15 employment or education is an important measure of
16 accountability for children with disabilities.

17 “(d) PURPOSES.—The purposes of this title are—

18 “(1)(A) to ensure that all children with disabil-
19 ities have available to them a free appropriate public
20 education that emphasizes special education and re-
21 lated services designed to meet their unique needs
22 and prepare them for further education, employ-
23 ment, and independent living;

1 “(B) to ensure that the rights of children with
2 disabilities and parents of such children are pro-
3 tected; and

4 “(C) to assist States, localities, educational
5 service agencies, and Federal agencies to provide for
6 the education of all children with disabilities;

7 “(2) to assist States in the implementation of
8 a statewide, comprehensive, coordinated, multidisci-
9 plinary, interagency system of early intervention
10 services for infants and toddlers with disabilities and
11 their families;

12 “(3) to ensure that educators and parents have
13 the necessary tools to improve educational results for
14 children with disabilities by supporting system im-
15 provement activities; coordinated research and per-
16 sonnel preparation; coordinated technical assistance,
17 dissemination, and support; and technology develop-
18 ment and media services; and

19 “(4) to assess, and ensure the effectiveness of,
20 efforts to educate children with disabilities.

21 **“SEC. 602. DEFINITIONS.**

22 “Except as otherwise provided, in this title:

23 “(1) ASSISTIVE TECHNOLOGY DEVICE.—

24 “(A) IN GENERAL.—The term ‘assistive
25 technology device’ means any item, piece of

1 equipment, or product system, whether acquired
2 commercially off the shelf, modified, or cus-
3 tomized, that is used to increase, maintain, or
4 improve functional capabilities of a child with a
5 disability.

6 “(B) EXCEPTION.—The term does not in-
7 clude a medical device that is surgically im-
8 planted, or the replacement of such device.

9 “(2) ASSISTIVE TECHNOLOGY SERVICE.—The
10 term ‘assistive technology service’ means any service
11 that directly assists a child with a disability in the
12 selection, acquisition, or use of an assistive tech-
13 nology device. Such term includes—

14 “(A) the evaluation of the needs of such
15 child, including a functional evaluation of the
16 child in the child’s customary environment;

17 “(B) purchasing, leasing, or otherwise pro-
18 viding for the acquisition of assistive technology
19 devices by such child;

20 “(C) selecting, designing, fitting, custom-
21 izing, adapting, applying, maintaining, repair-
22 ing, or replacing assistive technology devices;

23 “(D) coordinating and using other thera-
24 pies, interventions, or services with assistive
25 technology devices, such as those associated

1 with existing education and rehabilitation plans
2 and programs;

3 “(E) training or technical assistance for
4 such child, or, where appropriate, the family of
5 such child; and

6 “(F) training or technical assistance for
7 professionals (including individuals providing
8 education and rehabilitation services), employ-
9 ers, or other individuals who provide services to,
10 employ, or are otherwise substantially involved
11 in the major life functions of such child.

12 “(3) CHILD WITH A DISABILITY.—

13 “(A) IN GENERAL.—The term ‘child with a
14 disability’ means a child—

15 “(i) with mental retardation, hearing
16 impairments (including deafness), speech
17 or language impairments, visual impair-
18 ments (including blindness), serious emo-
19 tional disturbance (referred to in this title
20 as ‘emotional disturbance’), orthopedic im-
21 pairments, autism, traumatic brain injury,
22 other health impairments, or specific learn-
23 ing disabilities; and

24 “(ii) who, by reason thereof, needs
25 special education and related services.

1 “(B) CHILD AGED 3 THROUGH 9.—The
2 term ‘child with a disability’ for a child aged 3
3 through 9 (or any subset of that age range, in-
4 cluding ages 3 through 5), may, at the discre-
5 tion of the State and the local educational agen-
6 cy, include a child—

7 “(i) experiencing developmental
8 delays, as defined by the State and as
9 measured by appropriate diagnostic instru-
10 ments and procedures, in 1 or more of the
11 following areas: physical development; cog-
12 nitive development; communication devel-
13 opment; social or emotional development;
14 or adaptive development; and

15 “(ii) who, by reason thereof, needs
16 special education and related services.

17 “(4) CORE ACADEMIC SUBJECTS.—The term
18 ‘core academic subjects’ has the meaning given the
19 term in section 9101 of the Elementary and Sec-
20 ondary Education Act of 1965.

21 “(5) EDUCATIONAL SERVICE AGENCY.—The
22 term ‘educational service agency’—

23 “(A) means a regional public multiservice
24 agency—

1 “(i) authorized by State law to de-
2 velop, manage, and provide services or pro-
3 grams to local educational agencies; and

4 “(ii) recognized as an administrative
5 agency for purposes of the provision of
6 special education and related services pro-
7 vided within public elementary schools and
8 secondary schools of the State; and

9 “(B) includes any other public institution
10 or agency having administrative control and di-
11 rection over a public elementary school or sec-
12 ondary school.

13 “(6) ELEMENTARY SCHOOL.—The term ‘ele-
14 mentary school’ means a nonprofit institutional day
15 or residential school, including a public elementary
16 charter school, that provides elementary education,
17 as determined under State law.

18 “(7) EQUIPMENT.—The term ‘equipment’
19 includes—

20 “(A) machinery, utilities, and built-in
21 equipment, and any necessary enclosures or
22 structures to house such machinery, utilities, or
23 equipment; and

24 “(B) all other items necessary for the
25 functioning of a particular facility as a facility

1 for the provision of educational services, includ-
2 ing items such as instructional equipment and
3 necessary furniture; printed, published, and
4 audio-visual instructional materials; tele-
5 communications, sensory, and other techno-
6 logical aids and devices; and books, periodicals,
7 documents, and other related materials.

8 “(8) EXCESS COSTS.—The term ‘excess costs’
9 means those costs that are in excess of the average
10 annual per-student expenditure in a local edu-
11 cational agency during the preceding school year for
12 an elementary school or secondary school student, as
13 may be appropriate, and which shall be computed
14 after deducting—

15 “(A) amounts received—

16 “(i) under part B;

17 “(ii) under part A of title I of the El-
18 ementary and Secondary Education Act of
19 1965; and

20 “(iii) under parts A and B of title III
21 of that Act; and

22 “(B) any State or local funds expended for
23 programs that would qualify for assistance
24 under any of those parts.

1 “(9) FREE APPROPRIATE PUBLIC EDU-
2 CATION.—The term ‘free appropriate public edu-
3 cation’ means special education and related services
4 that—

5 “(A) have been provided at public expense,
6 under public supervision and direction, and
7 without charge;

8 “(B) meet the standards of the State edu-
9 cational agency;

“(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

“(D) are provided in conformity with the individualized education program required under section 614(d).

16 “(10) HIGHLY QUALIFIED.—

“(A) IN GENERAL.—For any special education teacher, the term ‘highly qualified’ has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also—

“(i) includes the requirements de-
scribed in subparagraph (B); and

24 “(ii) includes the option for teachers
25 to meet the requirements of section 9101

1 of such Act by meeting the requirements of
2 subparagraph (C) or (D).

3 “(B) REQUIREMENTS FOR SPECIAL EDU-
4 CATION TEACHERS.—When used with respect to
5 any public elementary school or secondary
6 school special education teacher teaching in a
7 State, such term means that—

8 “(i) the teacher has obtained full
9 State certification as a special education
10 teacher (including certification obtained
11 through alternative routes to certification),
12 or passed the State special education
13 teacher licensing examination, and holds a
14 license to teach in the State as a special
15 education teacher, except that when used
16 with respect to any teacher teaching in a
17 public charter school, the term means that
18 the teacher meets the requirements set
19 forth in the State’s public charter school
20 law;

21 “(ii) the teacher has not had special
22 education certification or licensure require-
23 ments waived on an emergency, temporary,
24 or provisional basis; and

1 “(iii) the teacher holds at least a
2 bachelor’s degree.

3 “(C) SPECIAL EDUCATION TEACHERS
4 TEACHING TO ALTERNATE ACHIEVEMENT
5 STANDARDS.—When used with respect to a spe-
6 cial education teacher who teaches core aca-
7 demic subjects exclusively to children who are
8 assessed against alternate achievement stand-
9 ards established under the regulations promul-
10 gated under section 1111(b)(1) of the Elemen-
11 tary and Secondary Education Act of 1965,
12 such term means the teacher, whether new or
13 not new to the profession, may either—

14 “(i) meet the applicable requirements
15 of section 9101 of such Act for any ele-
16 mentary, middle, or secondary school
17 teacher who is new or not new to the pro-
18 fession; or

“(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as deter-

1 mined by the State, needed to effectively
2 teach to those standards.

3 “(D) SPECIAL EDUCATION TEACHERS
4 TEACHING MULTIPLE SUBJECTS.—When used
5 with respect to a special education teacher who
6 teaches 2 or more core academic subjects exclu-
7 sively to children with disabilities, such term
8 means that the teacher may either—

9 “(i) meet the applicable requirements
10 of section 9101 of the Elementary and
11 Secondary Education Act of 1965 for any
12 elementary, middle, or secondary school
13 teacher who is new or not new to the pro-
14 fession;

15 “(ii) in the case of a teacher who is
16 not new to the profession, demonstrate
17 competence in all the core academic sub-
18 jects in which the teacher teaches in the
19 same manner as is required for an elemen-
20 tary, middle, or secondary school teacher
21 who is not new to the profession under sec-
22 tion 9101(23)(C)(ii) of such Act, which
23 may include a single, high objective uni-
24 form State standard of evaluation covering
25 multiple subjects; or

1 “(iii) in the case of a new special edu-
2 cation teacher who teaches multiple sub-
3 jects and who is highly qualified in mathe-
4 matics, language arts, or science, dem-
5 onstrate competence in the other core aca-
6 demic subjects in which the teacher teach-
7 es in the same manner as is required for
8 an elementary, middle, or secondary school
9 teacher under section 9101(23)(C)(ii) of
10 such Act, which may include a single, high
11 objective uniform State standard of evalua-
12 tion covering multiple subjects, not later
13 than 2 years after the date of employment.

14 “(E) RULE OF CONSTRUCTION.—Notwith-
15 standing any other individual right of action
16 that a parent or student may maintain under
17 this part, nothing in this section or part shall
18 be construed to create a right of action on be-
19 half of an individual student or class of stu-
20 dents for the failure of a particular State edu-
21 cational agency or local educational agency em-
22 ployee to be highly qualified.

23 “(F) DEFINITION FOR PURPOSES OF THE
24 ESEA.—A teacher who is highly qualified under
25 this paragraph shall be considered highly quali-

1 fied for purposes of the Elementary and Sec-
2 ondary Education Act of 1965.

3 “(11) HOMELESS CHILDREN.—The term ‘home-
4 less children’ has the meaning given the term ‘home-
5 less children and youths’ in section 725 of the
6 McKinney-Vento Homeless Assistance Act (42
7 U.S.C. 11434a).

8 “(12) INDIAN.—The term ‘Indian’ means an in-
9 dividual who is a member of an Indian tribe.

10 “(13) INDIAN TRIBE.—The term ‘Indian tribe’
11 means any Federal or State Indian tribe, band,
12 rancheria, pueblo, colony, or community, including
13 any Alaska Native village or regional village corpora-
14 tion (as defined in or established under the Alaska
15 Native Claims Settlement Act (43 U.S.C. 1601 et
16 seq.)).

17 “(14) INDIVIDUALIZED EDUCATION PROGRAM;
18 IEP.—The term ‘individualized education program’
19 or ‘IEP’ means a written statement for each child
20 with a disability that is developed, reviewed, and re-
21 vised in accordance with section 614(d).

22 “(15) INDIVIDUALIZED FAMILY SERVICE
23 PLAN.—The term ‘individualized family service plan’
24 has the meaning given the term in section 636.

1 “(16) INFANT OR TODDLER WITH A DIS-
2 ABILITY.—The term ‘infant or toddler with a dis-
3 ability’ has the meaning given the term in section
4 632.

5 “(17) INSTITUTION OF HIGHER EDUCATION.—
6 The term ‘institution of higher education’—

7 “(A) has the meaning given the term in
8 section 101 of the Higher Education Act of
9 1965; and

10 “(B) also includes any community college
11 receiving funding from the Secretary of the In-
12 terior under the Tribally Controlled College or
13 University Assistance Act of 1978.

14 “(18) LIMITED ENGLISH PROFICIENT.—The
15 term ‘limited English proficient’ has the meaning
16 given the term in section 9101 of the Elementary
17 and Secondary Education Act of 1965.

18 “(19) LOCAL EDUCATIONAL AGENCY.—

19 “(A) IN GENERAL.—The term ‘local edu-
20 cational agency’ means a public board of edu-
21 cation or other public authority legally con-
22 stituted within a State for either administrative
23 control or direction of, or to perform a service
24 function for, public elementary schools or sec-
25 ondary schools in a city, county, township,

1 school district, or other political subdivision of
2 a State, or for such combination of school dis-
3 tricts or counties as are recognized in a State
4 as an administrative agency for its public ele-
5 mentary schools or secondary schools.

6 “(B) EDUCATIONAL SERVICE AGENCIES
7 AND OTHER PUBLIC INSTITUTIONS OR AGEN-
8 CIES.—The term includes—

9 “(i) an educational service agency;
10 and

11 “(ii) any other public institution or
12 agency having administrative control and
13 direction of a public elementary school or
14 secondary school.

15 “(C) BIA FUNDED SCHOOLS.—The term
16 includes an elementary school or secondary
17 school funded by the Bureau of Indian Affairs,
18 but only to the extent that such inclusion
19 makes the school eligible for programs for
20 which specific eligibility is not provided to the
21 school in another provision of law and the
22 school does not have a student population that
23 is smaller than the student population of the
24 local educational agency receiving assistance
25 under this title with the smallest student popu-

1 lation, except that the school shall not be sub-
2 ject to the jurisdiction of any State educational
3 agency other than the Bureau of Indian Affairs.

4 “(20) NATIVE LANGUAGE.—The term ‘native
5 language’, when used with respect to an individual
6 who is limited English proficient, means the lan-
7 guage normally used by the individual or, in the case
8 of a child, the language normally used by the par-
9 ents of the child.

10 “(21) NONPROFIT.—The term ‘nonprofit’, as
11 applied to a school, agency, organization, or institu-
12 tion, means a school, agency, organization, or insti-
13 tution owned and operated by 1 or more nonprofit
14 corporations or associations no part of the net earn-
15 ings of which inures, or may lawfully inure, to the
16 benefit of any private shareholder or individual.

17 “(22) OUTLYING AREA.—The term ‘outlying
18 area’ means the United States Virgin Islands,
19 Guam, American Samoa, and the Commonwealth of
20 the Northern Mariana Islands.

21 “(23) PARENT.—The term ‘parent’ means—

22 “(A) a natural, adoptive, or foster parent
23 of a child (unless a foster parent is prohibited
24 by State law from serving as a parent);

1 “(B) a guardian (but not the State if the
2 child is a ward of the State);

3 “(C) an individual acting in the place of a
4 natural or adoptive parent (including a grand-
5 parent, stepparent, or other relative) with whom
6 the child lives, or an individual who is legally
7 responsible for the child’s welfare; or

8 “(D) except as used in sections 615(b)(2)
9 and 639(a)(5), an individual assigned under ei-
10 ther of those sections to be a surrogate parent.

11 “(24) PARENT ORGANIZATION.—The term ‘par-
12 ent organization’ has the meaning given the term in
13 section 671(g).

14 “(25) PARENT TRAINING AND INFORMATION
15 CENTER.—The term ‘parent training and informa-
16 tion center’ means a center assisted under section
17 671 or 672.

18 “(26) RELATED SERVICES.—

19 “(A) IN GENERAL.—The term ‘related
20 services’ means transportation, and such devel-
21 opmental, corrective, and other supportive serv-
22 ices (including speech-language pathology and
23 audiology services, interpreting services, psycho-
24 logical services, physical and occupational ther-
25 apy, recreation, including therapeutic recre-

1 ation, social work services, school nurse services
2 designed to enable a child with a disability to
3 receive a free appropriate public education as
4 described in the individualized education pro-
5 gram of the child, counseling services, including
6 rehabilitation counseling, orientation and mobil-
7 ity services, and medical services, except that
8 such medical services shall be for diagnostic
9 and evaluation purposes only) as may be re-
10 quired to assist a child with a disability to ben-
11 efit from special education, and includes the
12 early identification and assessment of disabling
13 conditions in children.

14 “(B) EXCEPTION.—The term does not in-
15 clude a medical device that is surgically im-
16 planted, or the replacement of such device.

17 “(27) SECONDARY SCHOOL.—The term ‘sec-
18 ondary school’ means a nonprofit institutional day or
19 residential school, including a public secondary char-
20 ter school, that provides secondary education, as de-
21 termined under State law, except that it does not in-
22 clude any education beyond grade 12.

23 “(28) SECRETARY.—The term ‘Secretary’
24 means the Secretary of Education.

1 “(29) SPECIAL EDUCATION.—The term ‘special
2 education’ means specially designed instruction, at
3 no cost to parents, to meet the unique needs of a
4 child with a disability, including—

5 “(A) instruction conducted in the class-
6 room, in the home, in hospitals and institutions,
7 and in other settings; and

8 “(B) instruction in physical education.

9 “(30) SPECIFIC LEARNING DISABILITY.—

10 “(A) IN GENERAL.—The term ‘specific
11 learning disability’ means a disorder in 1 or
12 more of the basic psychological processes in-
13 volved in understanding or in using language,
14 spoken or written, which disorder may manifest
15 itself in the imperfect ability to listen, think,
16 speak, read, write, spell, or do mathematical
17 calculations.

18 “(B) DISORDERS INCLUDED.—Such term
19 includes such conditions as perceptual disabil-
20 ities, brain injury, minimal brain dysfunction,
21 dyslexia, and developmental aphasia.

22 “(C) DISORDERS NOT INCLUDED.—Such
23 term does not include a learning problem that
24 is primarily the result of visual, hearing, or
25 motor disabilities, of mental retardation, of

1 emotional disturbance, or of environmental, cul-
2 tural, or economic disadvantage.

3 “(31) STATE.—The term ‘State’ means each of
4 the 50 States, the District of Columbia, the Com-
5 monwealth of Puerto Rico, and each of the outlying
6 areas.

7 “(32) STATE EDUCATIONAL AGENCY.—The
8 term ‘State educational agency’ means the State
9 board of education or other agency or officer pri-
10 marily responsible for the State supervision of public
11 elementary schools and secondary schools, or, if
12 there is no such officer or agency, an officer or
13 agency designated by the Governor or by State law.

14 “(33) SUPPLEMENTARY AIDS AND SERVICES.—
15 The term ‘supplementary aids and services’ means
16 aids, services, and other supports that are provided
17 in regular education classes or other education-re-
18 lated settings to enable children with disabilities to
19 be educated with nondisabled children to the max-
20 imum extent appropriate in accordance with section
21 612(a)(5).

22 “(34) TRANSITION SERVICES.—The term ‘tran-
23 sition services’ means a coordinated set of activities
24 for a child with a disability that—

1 “(A) is designed to be within a results-ori-
2 ented process, that is focused on improving the
3 academic and functional achievement of the
4 child with a disability to facilitate the child’s
5 movement from school to post-school activities,
6 including post-secondary education, vocational
7 education, integrated employment (including
8 supported employment), continuing and adult
9 education, adult services, independent living, or
10 community participation;

11 “(B) is based on the individual child’s
12 needs, taking into account the child’s strengths,
13 preferences, and interests; and

14 “(C) includes instruction, related services,
15 community experiences, the development of em-
16 ployment and other post-school adult living ob-
17 jectives, and, when appropriate, acquisition of
18 daily living skills and functional vocational eval-
19 uation.

20 “(35) UNIVERSAL DESIGN.—The term ‘uni-
21 versal design’ has the meaning given the term in
22 section 3 of the Assistive Technology Act of 1998
23 (29 U.S.C. 3002).

24 “(36) WARD OF THE STATE.—

1 “(A) IN GENERAL.—The term ‘ward of the
2 State’ means a child who, as determined by the
3 State where the child resides, is a foster child,
4 is a ward of the State, or is in the custody of
5 a public child welfare agency.

6 “(B) EXCEPTION.—The term does not in-
7 clude a foster child who has a foster parent who
8 meets the definition of a parent in paragraph
9 (23).

10 **“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

11 “(a) ESTABLISHMENT.—There shall be, within the
12 Office of Special Education and Rehabilitative Services in
13 the Department of Education, an Office of Special Edu-
14 cation Programs, which shall be the principal agency in
15 the Department for administering and carrying out this
16 title and other programs and activities concerning the edu-
17 cation of children with disabilities.

18 “(b) DIRECTOR.—The Office established under sub-
19 section (a) shall be headed by a Director who shall be se-
20 lected by the Secretary and shall report directly to the As-
21 sistant Secretary for Special Education and Rehabilitative
22 Services.

23 “(c) VOLUNTARY AND UNCOMPENSATED SERV-
24 ICES.—Notwithstanding section 1342 of title 31, United
25 States Code, the Secretary is authorized to accept vol-

1 untary and uncompensated services in furtherance of the
2 purposes of this title.

3 **“SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.**

4 “(a) IN GENERAL.—A State shall not be immune
5 under the 11th amendment to the Constitution of the
6 United States from suit in Federal court for a violation
7 of this title.

8 “(b) REMEDIES.—In a suit against a State for a vio-
9 lation of this title, remedies (including remedies both at
10 law and in equity) are available for such a violation to
11 the same extent as those remedies are available for such
12 a violation in the suit against any public entity other than
13 a State.

14 “(c) EFFECTIVE DATE.—Subsections (a) and (b)
15 apply with respect to violations that occur in whole or part
16 after the date of enactment of the Education of the Handi-
17 capped Act Amendments of 1990.

18 **“SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION**
19 **OR ALTERATION OF FACILITIES.**

20 “(a) IN GENERAL.—If the Secretary determines that
21 a program authorized under this title will be improved by
22 permitting program funds to be used to acquire appro-
23 priate equipment, or to construct new facilities or alter
24 existing facilities, the Secretary is authorized to allow the
25 use of those funds for those purposes.

1 “(b) COMPLIANCE WITH CERTAIN REGULATIONS.—

2 Any construction of new facilities or alteration of existing
3 facilities under subsection (a) shall comply with the re-
4 quirements of—

5 “(1) appendix A of part 36 of title 28, Code of
6 Federal Regulations (commonly known as the
7 ‘Americans with Disabilities Accessibility Guidelines
8 for Buildings and Facilities’); or

9 “(2) appendix A of subpart 101–19.6 of title
10 41, Code of Federal Regulations (commonly known
11 as the ‘Uniform Federal Accessibility Standards’).

12 **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**
13 **ITIES.**

14 “The Secretary shall ensure that each recipient of as-
15 sistance under this title makes positive efforts to employ
16 and advance in employment qualified individuals with dis-
17 abilities in programs assisted under this title.

18 **“SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULA-**
19 **TIONS.**

20 “(a) IN GENERAL.—In carrying out the provisions of
21 this title, the Secretary shall issue regulations under this
22 title only to the extent that such regulations are necessary
23 to ensure that there is compliance with the specific re-
24 quirements of this title.

1 “(b) PROTECTIONS PROVIDED TO CHILDREN.—The
2 Secretary may not implement, or publish in final form,
3 any regulation prescribed pursuant to this title that—

4 “(1) violates or contradicts any provision of this
5 title; or

6 “(2) procedurally or substantively lessens the
7 protections provided to children with disabilities
8 under this title, as embodied in regulations in effect
9 on July 20, 1983 (particularly as such protections
10 related to parental consent to initial evaluation or
11 initial placement in special education, least restric-
12 tive environment, related services, timelines, attend-
13 ance of evaluation personnel at individualized edu-
14 cation program meetings, or qualifications of per-
15 sonnel), except to the extent that such regulation re-
16 flects the clear and unequivocal intent of Congress
17 in legislation.

18 “(c) PUBLIC COMMENT PERIOD.—The Secretary
19 shall provide a public comment period of not less than 75
20 days on any regulation proposed under part B or part C
21 on which an opportunity for public comment is otherwise
22 required by law.

23 “(d) POLICY LETTERS AND STATEMENTS.—The Sec-
24 retary may not issue policy letters or other statements (in-

1 cluding letters or statements regarding issues of national
2 significance) that—

3 “(1) violate or contradict any provision of this
4 title; or

5 “(2) establish a rule that is required for compli-
6 ance with, and eligibility under, this title without fol-
7 lowing the requirements of section 553 of title 5,
8 United States Code.

9 “(e) EXPLANATION AND ASSURANCES.—Any written
10 response by the Secretary under subsection (d) regarding
11 a policy, question, or interpretation under part B shall in-
12 clude an explanation in the written response that—

13 “(1) such response is provided as informal guid-
14 ance and is not legally binding;

15 “(2) when required, such response is issued in
16 compliance with the requirements of section 553 of
17 title 5, United States Code; and

18 “(3) such response represents the interpretation
19 by the Department of Education of the applicable
20 statutory or regulatory requirements in the context
21 of the specific facts presented.

22 “(f) CORRESPONDENCE FROM DEPARTMENT OF
23 EDUCATION DESCRIBING INTERPRETATIONS OF THIS
24 TITLE.—

1 “(1) IN GENERAL.—The Secretary shall, on a
2 quarterly basis, publish in the Federal Register, and
3 widely disseminate to interested entities through var-
4 ious additional forms of communication, a list of
5 correspondence from the Department of Education
6 received by individuals during the previous quarter
7 that describes the interpretations of the Department
8 of Education of this title or the regulations imple-
9 mented pursuant to this title.

10 “(2) ADDITIONAL INFORMATION.—For each
11 item of correspondence published in a list under
12 paragraph (1), the Secretary shall—

13 “(A) identify the topic addressed by the
14 correspondence and shall include such other
15 summary information as the Secretary deter-
16 mines to be appropriate; and

17 “(B) ensure that all such correspondence
18 is issued, where applicable, in compliance with
19 the requirements of section 553 of title 5,
20 United States Code.

21 **“SEC. 608. STATE ADMINISTRATION.**

22 “(a) RULEMAKING.—Each State that receives funds
23 under this title shall—

1 “(1) ensure that any State rules, regulations,
2 and policies relating to this title conform to the pur-
3 poses of this title;

4 “(2) identify in writing to local educational
5 agencies located in the State and the Secretary any
6 such rule, regulation, or policy as a State-imposed
7 requirement that is not required by this title and
8 Federal regulations; and

9 “(3) minimize the number of rules, regulations,
10 and policies to which the local educational agencies
11 and schools located in the State are subject under
12 this title.

13 “(b) SUPPORT AND FACILITATION.—State rules, reg-
14 ulations, and policies under this title shall support and fa-
15 cilitate local educational agency and school-level system
16 improvement designed to enable children with disabilities
17 to meet the challenging State student academic achieve-
18 ment standards.

19 **“SEC. 609. PAPERWORK REDUCTION.**

20 “(a) PILOT PROGRAM.—

21 “(1) PURPOSE.—The purpose of this section is
22 to provide an opportunity for States to identify ways
23 to reduce paperwork burdens and other administra-
24 tive duties that are directly associated with the re-
25 quirements of this title, in order to increase the time

1 and resources available for instruction and other ac-
2 tivities aimed at improving educational and func-
3 tional results for children with disabilities.

4 “(2) AUTHORIZATION.—

5 “(A) IN GENERAL.—In order to carry out
6 the purpose of this section, the Secretary is au-
7 thorized to grant waivers of statutory require-
8 ments of, or regulatory requirements relating
9 to, part B for a period of time not to exceed 4
10 years with respect to not more than 15 States
11 based on proposals submitted by States to re-
12 duce excessive paperwork and noninstructional
13 time burdens that do not assist in improving
14 educational and functional results for children
15 with disabilities.

16 “(B) EXCEPTION.—The Secretary shall
17 not waive under this section any statutory re-
18 quirements of, or regulatory requirements relat-
19 ing to, applicable civil rights requirements.

20 “(C) RULE OF CONSTRUCTION.—Nothing
21 in this section shall be construed to—

22 “(i) affect the right of a child with a
23 disability to receive a free appropriate pub-
24 lic education under part B; and

1 “(A) needs assistance under section
2 616(d)(2)(A)(ii) and that the waiver has con-
3 tributed to or caused such need for assistance;

4 “(B) needs intervention under section
5 616(d)(2)(A)(iii) or needs substantial interven-
6 tion under section 616(d)(2)(A)(iv); or

7 “(C) failed to appropriately implement its
8 waiver.

9 “(b) REPORT.—Beginning 2 years after the date of
10 enactment of the Individuals with Disabilities Education
11 Improvement Act of 2004, the Secretary shall include in
12 the annual report to Congress submitted pursuant to sec-
13 tion 426 of the Department of Education Organization
14 Act information related to the effectiveness of waivers
15 granted under subsection (a), including any specific rec-
16 ommendations for broader implementation of such waiv-
17 ers, in—

18 “(1) reducing—

19 “(A) the paperwork burden on teachers,
20 principals, administrators, and related service
21 providers; and

22 “(B) noninstructional time spent by teach-
23 ers in complying with part B;

24 “(2) enhancing longer-term educational plan-
25 ning;

1 “(3) improving positive outcomes for children
2 with disabilities;

3 “(4) promoting collaboration between IEP
4 Team members; and

5 “(5) ensuring satisfaction of family members.

6 **“SEC. 610. FREELY ASSOCIATED STATES.**

7 “The Republic of the Marshall Islands, the Federated
8 States of Micronesia, and the Republic of Palau shall con-
9 tinue to be eligible for competitive grants administered by
10 the Secretary under this title to the extent that such
11 grants continue to be available to States and local edu-
12 cational agencies under this title.